1 2 3 4 5 6 7 8 9	Brian S. Kabateck, SBN. 152054 bsk@kbklawyers.com Christopher Noyes, SBN. 270094 cn@kbklawyers.com Joana Fang, Esq. SBN. 309623 jf@kbklawyers.com KABATECK LLP 633 W. 5th. Street, Suite 3200 Los Angeles, CA 90071 Telephone: (213) 217-5000 Facsimile: (213) 217-5010 Attorneys for Plaintiff  UNITED STATES	DISTRICT COURT
11	NORTHERN DISTRICT OF CALIFORNIA	
12	SAN FRANCISCO DIVISION	
13		.500 21 (15101)
14	VEITH DATTEDCON individually and	CASE NO. 2.19 or 00055
15	KEITH PATTERSON, individually, and on behalf of all others similarly situated,	CASE NO. 3:18-cv-00055
16	Plaintiffs,	The Hon. Vince Chhabria
17	VS.	
18 19	RW DIRECT, INC., POSITEC USA, INC.; and DOES 1 to 50, inclusive,	JOINT REQUEST FOR DIMISSAL PER RULE 23(e); [PPOPOSED] ORDER
20	Defendants.	ORDER
21		(Filed concurrently with Declaration of
22		Joana Fang)
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JOINT REQUEST FOR DISMISSAL; [PROPOSED] ORDER

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## **JOINT REQUEST FOR DISMISSAL**

Plaintiff KEITH PATTERSON (hereinafter, "Plaintiff") and Defendants RW DIRECT, INC. and POSITEC USA, INC. (hereinafter, "Defendants") by and through their respective counsel of record hereby submit this request for dismissal and request an order from the Court dismissing the above captioned case with prejudice.

WHEREAS, on January 4, 2018, Plaintiff filed a proposed class action against Defendants involving the WORX WG782 14-Inch 24 Volt Cordless Mower ("WORX mower"), in the United States District Court, Northern District of California, Case No. 3:18-cv-00055 ("Complaint") alleging claims for (1) Breach of Express Warranty, (2) Breach of Implied Warranty, (3) Breach of Express Warranty (Magnuson-Moss Warranty Act) (4) Declaratory Judgment Act (28 U.S.C. §§ 2201(a), et. seq., (5) Breach of Express Warranty (Song-Beverly Consumer Warranty Act), (6) Breach of Implied Warranty (Song-Beverly Consumer Warranty Act), (7) Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, et. seq.), (8) Unfair Competition Law (Cal. Bus. & Prof. Code § 17200), (9) Breach of Express Warranty Under Cal. U. Com. Code § 2313), and (10) Breach of Implied Warranty Under Cal. U. Com. Code § 2314 (Declaration of Joana Fang "Dec of JF," ¶2);

WHEREAS, the proposed class is not certified in this matter and no motion for certification has been made or is pending (Dec of JF,  $\P 3$ );

WHEREAS, based on the limited exposure of this case in the press, it is highly unlikely that any putative class member has relied on the filing of this action. Furthermore, no putative class members have filed any other action, or contacted any of the parties, or sought to intervene in this action (Dec of JF, ¶4);

WHEREAS, class counsel is unaware of the identities of any putative class members and therefore, cannot notify the unnamed class members of the dismissal

if required to do so (Dec of JF, ¶5);

WHEREAS, class counsel is not aware of any danger that absent class members will be prejudiced by a "rapidly approaching statute of limitations." The filing of a class action on both federal and state law claims tolls the applicable statute of limitations for members of the putative class (*See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-554 (1974)) (Dec of JF, ¶6);

WHEREAS, the interests of putative class members are not being compromised by Plaintiff's individual settlement as it was reached after testing conducted on Plaintiff's WORX mower by Plaintiff's expert did not substantiate the alleged defect claims (Dec of JF, ¶7); and

WHEREAS, the parties have agreed to the dismissal of this action on the following terms (i) dismissal of Plaintiff's individual claims with prejudice, (ii) dismissal of the putative class claims without prejudice to class members, and (iii) for Plaintiff and Defendant to each bear their respective attorney's fees and costs of suit (Dec of JF, ¶8).

Dated: October 22, 2019 Respectfully submitted,

## KABATECK LLP

By: /s/ Joana Fang
Counsel for Plaintiff and the
Proposed Class

Dated: October 22, 2019 Respectfully submitted,

## NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: <u>/s/ William H. Latham</u> *Counsel for Defendants* 

## [PROPOSED] ORDER

The foregoing Joint Request for Dismissal of the parties is accepted and approved, and this action is hereby dismissed on the following terms (i) dismissal of Plaintiff's individual claims with prejudice, (ii) dismissal of the putative class claims without prejudice to class members, and (iii) for Plaintiff and Defendant to each bear their respective attorney's fees and costs of suit.

IT IS SO ORDERED.

Dated: October 23, 2019
The Hon. Vince Chhabria